

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

B-218451

FILE:**DATE:** August 7, 1985

Kelsey-Seybold Clinic, P.A.

MATTER OF:**DIGEST:**

1. GAO does not find that agency's extension of incumbent protester's contract unfairly placed protester in a noncompetitive position relative to the competition for the follow-on contract.
2. Protester's allegation that a second round of best and final offers was unfairly requested to allow eventual awardee additional time to obtain malpractice insurance and to employ a retired Naval physician is without merit where contracting officer properly requested the second round to resolve material problems remaining with all offerors.
3. Where protester's second best and final offer fails to propose the number of physicians required by the solicitation, its proposal was properly rejected.

Kelsey-Seybold Clinic, P.A. (Kelsey-Seybold) protests the rejection of its proposal and the award of a contract to Sterling Medical Associates for three out of four items under request for proposals (RFP) No. N00140-84-R-1018 issued by the Naval Regional Contracting Center, Philadelphia, Pennsylvania (Navy) for physician services covering four medical specialties at the Great Lakes Naval Hospital. The protester received award for one specialty.

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We find no merit to the protest.

The RFP provided for a fixed price contract with two 1-year option periods. The RFP advised offerors that they must provide at least a sufficient number of physicians, stated as "full time equivalent (FTE) physicians," to meet the minimum level of effort specified in the contract schedule for each medical specialty. The RFP stated that separate contracts could be awarded for each of the specialties, and that contract award would be made to the responsible offeror whose offer, conforming to the solicitation, would be most advantageous to the government, cost and other factors considered.

The Navy received three offers. Kelsey-Seybold, the incumbent contractor, offered the lowest price for three specialties (otolaryngology, orthopedics, and obstetrics/gynecology), but the Navy only awarded it a contract for otolaryngology, and rejected the proposal as to the other two specialties. Sterling was awarded a contract for those specialties and for the remaining specialty (emergency medical services), for which Kelsey-Seybold's offer was not low.

Kelsey-Seybold alleges that the Navy deliberately extended its contract for similar physician services in order to place it in a noncompetitive position by creating an uncertain work situation which contributed to attrition and stifled recruitment activities. The protester also contends that the Navy requested a second round of best and final offers so that Sterling could obtain the required malpractice insurance and engage the services of a retired Naval orthopedic physician to qualify for award. The protester argues that Sterling did not have the required complement of orthopedic physicians on the date of its first best and final offer and, as proof, Kelsey-Seybold cites telephone calls and offers made to members of its staff. The protester finally complains that its proposal should not have been rejected because it offered the number of physicians required by the RFP.

With regard to the contract extensions, the protester has presented no evidence to support its allegation that its contract was extended to give Sterling a competitive advantage. The Navy states that the contract with Kelsey-Seybold was extended after the issuance of the current RFP in order to allow the contracting officer sufficient time to negotiate the follow-on contract. The Navy also states that Kelsey-Seybold agreed without objection to all of the contract extensions, which extended its contract for 6

months. We will not attribute improper motives to procurement personnel on the basis of unsupported allegations. Serv-Air, Inc., B-216582, Jan. 16, 1985, 85-1 CPD ¶ 42. The Navy's explanation that the contract extensions were required in order to negotiate the follow-on contract is reasonable, and we have no basis upon which to find otherwise. See Work System Design, Inc., B-213451, Aug. 27, 1984, 84-2 CPD ¶ 226.

With regard to the request for a second round of best and final offers, the Navy states that it was required to resolve significant problems remaining with all three offerors. Although Kelsey-Seybold alleges that second best and final offers were requested to allow Sterling the time to obtain malpractice insurance and hire a former Naval orthopedic physician, the record indicates that two offerors, including Sterling, lacked such insurance and that Kelsey-Seybold made a material pricing error. In order to resolve these and other issues, the Navy requested second best and final offers. Under section 15.611 of the Federal Acquisition Regulation, the contracting officer may reopen discussions after receipt of best and final offers if it is clearly in the government's interest to do so. 48 C.F.R. § 15.611 (1984). This covers situations where, as here, the information available after receipt of best and final offers is inadequate to reasonably justify contractor selection and award based on those offers. See also Lanier Business Products of Western Maryland, Inc., B-214468, July 23, 1984, 84-2 CPD ¶ 85. Under the regulation, therefore, the contracting officer was justified in requesting a second best and final offer from all three offerors. Finally, the Navy states, and we have confirmed, that Sterling included the retired Naval orthopedic physician in its initial best and final offer.

As for the rejection of the protester's proposal, the record indicates that Kelsey-Seybold was not awarded contracts for orthopedics and for obstetrics/gynecology because it failed to offer the required amount of "full time equivalent" physicians for those specialties. The RFP required three physicians for obstetrics/gynecology and three for orthopedics. In its second best and final offer for obstetrics/gynecology, Kelsey-Seybold offered only two full-time physicians for the contract period and two part-time physicians for a portion of the contract period. Similarly, as to orthopedics, the protester proposed only two physicians on a full-time basis and one physician on a part-time basis for a portion of the contract period. As stated previously, the RFP specifically advised offerors

that they were required to provide the level of effort specified in the contract schedule. Additionally, the record indicates that during discussions, Kelsey-Seybold was advised by the Navy that the failure to provide a full team of doctors for a given medical specialty would eliminate an offeror from consideration for that specialty. Although Kelsey-Seybold states that it complied with the RFP requirements, as discussed above, the protester did not provide the full complement of physicians for obstetrics/gynecology and orthopedics in its second best and final offer. On the other hand, contrary to the protester's allegation, Sterling's proposal offered the full complement of physicians required by the RFP.

The protest is denied.

for Seymour Egan
Harry R. Van Cleve
General Counsel